

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1098 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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BABUBHAI RAVJIBHAI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1098 of 1997
MR G RAMAKRISHNAN for Petitioner No. 1 - Absent
MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for Resp. State
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 14/08/2001

ORAL JUDGEMENT

This appeal is listed today for 11th time. On 24th July, 2001 this appeal was adjourned on the request made by Mr. Acharya, learned Counsel on the ground that Mr. G. Ramakrishnan was sick. Again on 7th August,

2001 this appeal was adjourned to today. In the first sitting when the matter was called out nobody was present for the appellant accused and therefore, it was kept back after recess, but unfortunately, after recess also Mr. Ramakrishnan was not present and therefore, in his absence the appeal is heard and decided with the due assistance of learned APP Shri N.D. Gohil, for the respondent State.

The appellant accused has challenged in this appeal the judgement and order of conviction and sentence dated 23rd October, 1997 passed by the learned Additional Sessions Judge, Surat in Sessions Case No. 177 of 1996, whereby the learned Judge convicted the accused for the offences under Sections 363, 365, 376 and 377 IPC and sentenced him to suffer RI for 5 years and fine of Rs. 1,000, in default to undergo SI for 6 months for the offence under Section 363 IPC, RI for 5 years and fine of Rs. 1,000, in default to undergo SI for 5 months for the offence under Section 365 IPC, RI for 5 years and fine of Rs. 1,000, in default to undergo 5 months SI for the offence under Section 376 IPC and RI for 7 years and fine of Rs. 1,000, in default to undergo SI for 5 months for offence under Section 377 IPC. However, substantive sentences were ordered to run concurrently.

It is the case of the prosecution that complainant Dhulichand Shankarlal Bhirade was staying with his family in Azadnagar Jhupadpatti, Bhandar Road, Surat. The complainant has three daughters and two sons. Prosecutrix Ranjanaben was 11 years old and she was studying in 4th Standard in 1995. The appellant accused Babubhai was serving alongwith the complainant as labourer of truck but he left said job and was staying with complainant till an alternative job was found out. On 10.5.1995, accused kidnapped his minor daughter Ranjanaben from the lawful custody of her father and committed rape as well as unnatural offence. The accused was arrested in connection with the aforesaid offences. To prove its case the prosecution has examined prosecutrix Ranjanaben Ex. 22, her mother Sitaben Ex. 23, complainant Dulichand Ex.17. In addition, prosecution has also examined Dr. Babubhai Ravjibhai Ex.6 and Dr. Raginiben Ex.26. FSL report is at Ex.31. Smt. Indumati, Principal of the School was examined at Ex. 12, who produced the birth-certificate of the prosecutrix. According to that certificate, her birth date was 18.6.1986, whereas the incident took place on 9.5.1995. Thus, she was below 12 years. Doctor has clearly opined that she was below 16 at the time of offence. This is such a ghasty act of the ungrateful

accused who took shelter at the place of the complainant and thereafter kidnapped his minor daughter and committed rape for which he should have been strictly dealt with. Unfortunately, maximum sentence awarded by the learned Judge is only 7 years. In absence of any appeal for enhancement of sentence filed by the State, now this Court is not able to do anything in the matter.

Having carefully gone through the evidence of prosecutrix Ranjanben Ex.22, I am fully satisfied that her evidence is reliable. Nothing substantial has come out in her cross-examination. Some minor discrepancies here or there would not make any difference. The accused was a robust man aged 50 years whereas the prosecutrix Ranjanben was below 12 years. Therefore, she would be aghast by such incident and therefore immediately she would not be able to tell anything about the incident to others. It is true that she had stated in her cross-examination that she had gone alongwith accused Babubhai which was seen by her mother, but Babubhai being known to her father and staying at the place for several days, then at that time she would not realise that for what purpose Babubhai was taking her alongwith him. It is too difficult to believe that because of enmity such false complaint was filed. This is not a case of rape only. In the instant case, the accused had committed unnatural offence also which is also duly corroborated by the evidence of doctor. In such type of cases there is no question of interference by the ends of this Court, when after due appreciation of the evidence the learned Judge has found the accused guilty for the offences under Sections 363, 365, 376 and 377 IPC and convicted and sentenced him as aforesaid.

In view of the aforesaid discussion, this appeal fails and is dismissed.

(B.J.Shethna, J.)

*/Mohandas